IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 292 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARESHBHAI MANIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 292 of 2002

MR KN PANDYA for Petitioner No. 1

MR DESAI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1

MR HIMANSHU K PATEL for Respondent No. 2

RULE SERVED BY DS for Respondent No. 3-4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/09/2002

ORAL JUDGEMENT

The revisioner is the complainant of a complaint lodged by him before Metropolitan Magistrate, Court No.19, registered as Enquiry No. 10/2002, whereunder respondents Nos. 2, 3, and 4 were alleged to have committed offences punishable under Sections 464, 467, 468, 472, 474, 120B and 420 of IPC. The said complaint was lodged on 15.2.2002. Learned Metropolitan Magistrate, Court No. 19, Ahmedabad passed an order directing the investigation to be made by Police under Section 156(3) of Cr.P.C. The order can be translated thus:

"Complaint be sent under Section 156(3) of Cr.P.C to PSO Ghatlodia Police Station. P.I. Ghatlodia should send superior officer for investigation after obtaining guidance of Police Commissioner Ahmedabad. Obtain directions and after doing so the investigating officer should submit report within 30 days to the Court."

[in above order, line 4, words ".... after obtaining guidance from Police Commissioner, Ahmedabad ..." have been subsequently scored off]

This order came to be challenged by the State before the City Sessions Court, by preferring Criminal Revision Application No. 54/02 and the learned Additional City Sessions Judge, by order dated 24th May, 2002, allowed the Revision Application and modified the order of the Magistrate by passing following order:-

"Order

This Revision Application is allowed and the complaint is sent to the Police Inspector, Ghatlodia Police Station for investigation under Section 156(3) CR.P.C and the concerned Police Inspector is directed to submit his report within one month from the date of receiving the intimation.

Pronounced in open Court today on this 24th day of May, 2002.

Sd/-
(V.C. Modi)
Additional Sessions Judge,
Ahmedabad City."

2. The original complainant is aggrieved by the said

order passed in the Revision Application and hence this Revision.

3. Respondent No.1 State is represented by Additional Public Prosecutor Mr. Desai. Respondent No.2 is represented by learned Advocate Mr. S.V. Raju. Respondent No.3 is personally present before this Court and respondent No.4 though served with a notice of rule, has chosen not to contest this Revision Application.

4. Learned Advocate Mr. Pandya appearing for the revisioner submitted that the order of the Magistrate interfered with by the Additional City Sessions Judge in exercise of revisional powers could not have been interfered with as orders under Section 156(3) are held to be interlocutory. In support of his contention, he has relied on decision in the case of Chandrakant Keshavlal Shah Vs. State of Gujarat, reported in 2002 (1) GLR 750. Mr. Pandya submitted that there is a clear bar under Section 397(2) of Cr.P.C against entertaining of such interlocutory orders. The order of the City Sessions Court is therefore bad in law and may be set aside.

4.1 Mr. Pandya submitted further that despite lapse of such a long time and despite orders, the investigation has not even begun till today, the complainant therefore apprehends a foul play and therefore the investigation may be ordered to be conducted either by CID or CBI. He therefore urged that this revision may be entertained.

5. Learned Advocate Mr. Raju appearing for respondent No.1 submitted that what is interfered with by the Sessions Court is not an order under Section 156(3) of Cr.P.C. That order still stands and investigation is directed to Police under Section 156(3) of Cr.P.C. What is not approved by the City Sessions Court and what is removed from the order of the learned Metropolitan Magistrate by the City Sessions Court is the direction part on the P.I Ghatlodia for sending a superior officer and obtaining instruction from Commissioner of Police, which could have been done while exercising powers under Section 156(3) of Cr.P.C by Ld. Metropolitan Magistrate. In support of his contention, Mr. Raju has placed reliance on the following decisions:-

1. Central Bureau of Investigation Vs. State of Rajasthan and anr. reported in (2001) 3 SCC 333;

2. Smt. Parmeshwari Devi Vs. The State and

anr. reported in (1977) 1 SCC 169;

3. Nirmaljit Singh Hoon Vs. The State of West Bengal and anr., reported in (1973) 3 SCC 753.

5.1 Learned Advocate Mr S.V Raju submitted that in view of the observations made by the apex Court in the case of CBI Vs. State of Rajasthan (supra) this Court cannot direct investigation to be made by CID or CBI while exercising revisional powers. While exercising revisional powers, the Court has only to examine the propriety, correctness and legality of the order impugned and the either to set aside order or to confirm the order. Such directions are not permissible and can be passed only where the Court exercises powers under Article 226 of Constitution. Mr. Raju therefore urged that this revision may be dismissed.

6. Respondent No.3 - party-in-person submitted that he adopts the arguments advanced by Ld. Advocate Mr. S.V. Raju. He further submitted that the complainant - revisioner herein is in habit of lodging false complaints and in past also he has lodged such complaints where he has failed. He submitted that the past record may be explored and the revisioner may be dealt with sternly and the revision may be dismissed.

7. Learned Additional Public Prosecutor Mr. Desai also adopts the arguments of Ld. Advocate Mr. Raju. He further submitted that the investigation has not progressed because of pendency of this revision application. He submitted that since the parties are fighting inter-se, the investigating agency is not able to make any progress in the investigation. He also urged that the revision may be dismissed.

8. Learned Advocate Mr. Pandya for the revisioner, in reply to the arguments advanced on behalf of the respondents, submitted that the judgements relied upon by Mr. Raju would not be applicable to the facts of the present case for the reason that learned Metropolitan Magistrate has not ordered any investigation by CBI or CID. The investigation is ordered to be conducted by the PSO and therefore the judgement will not be applicable to the facts of the present case.

9. Having regard to the contentions raised by the parties, what is required to be considered by this Court is whether the order of the learned Metropolitan Magistrate in its entirety can be considered as one under

Section 156(3) of Cr.P.C. and whether it can be considered as an inter-locutory order which would be hit by Section 397(2) of Cr.P.C.

9.1 In this regard the decision of the apex Court in the case of Nirmaljit Singh Hoon (supra) has to be examined. In that decision order by the Chief Presidency Magistrate under Section 156(3) of Cr.P.C was under consideration and the apex Court observed " Indeed sub-section (3) expressly states that an investigation ordered by a Magistrate would be an investigation "as abovementioned", i.e. an investigation made by a police officer in his statutory right under sub-section (1) and (2). That being so, once an investigation by the police is ordered by a magistrate, the magistrate cannot place any limitations on or direct the officer conducting it as to how to conduct it."

9.2 With this legal proposition settled by the Apex Court, if the order of the learned Metropolitan Magistrate is seen, the Magistrate has directed an investigation under Section 156(3) of Cr.P.C to PSO Ghatlodia Police Station and to that extent order can be said to be under Section 156(3) Cr.P.C, but learned Metropolitan Magistrate not stopping at that has also incorporated certain directions on PI Ghatlodia, guiding him as to how he should conduct the investigation, namely that he should send a superior officer of Police Commissionerate, Ahmedabad for investigation. He has also directed the PI to investigate the matter on guidance of the superior. Differently put, learned Metropolitan Magistrate has directed the investigating officer on the question as to how he should conduct the investigation, which in the case of Nirmaljit Singh Hood (supra) has been held to be not permissible and therefore the latter part giving directions cannot be said to be an order contemplated under Section 156(3) of Cr.P.C.

9.3 Section 156(3) contemplates an order directing investigation by Police as contemplated under Section 156(1) or 156(2). A Magistrate cannot order direct a superior Police Officer to conduct the investigation. The directions contained in the order of the Learned Magistrate would result in expecting the superior officer to investigate and the Commissioner of Police to monitor the investigation, though not ordered in clear terms.

9.4 Learned Additional City Sessions Judge has interfered with only that part of the order and therefore it cannot be said that learned Additional City Sessions Judge has interfered with an order under Section 156(3)

of Cr.P.C and in the view of this Court therefore, no error can be said to have been committed by the learned Additional City Sessions Judge in interfering with that part of the order, which in the opinion of this Court is not a part of an order under Section 156(3) of Cr.P.C as it was beyond the power of the learned Metropolitan Magistrate conferred under Section 156(3) of Cr.P.C. By giving such directions, indirectly, the investigation is monitored by the Magistrerial Court, as it directs the manner in which the investigation is to be conducted, which could not have been done. This was something which cannot be said to have been contemplated under Section 156(3) of Cr.P.C and therefore, it could not have been permitted to stand.

9.5 So far as the contention that order under Section 156(3) Cr.P.C is an inter-locutory order and therefore would be hit by Section 397(2) of Cr.P.C is concerned, as discussed above, in the first instance in the opinion of this Court, the direction part of the order is not an order under Section 156(3) of Cr.P.C. Apart from this, it has to be also considered that for considering the question whether an order is inter-locutory or not, the Court has to address and consider it from the point of view of the persons seeking revision. Before the City Sessions Court, the revision was preferred by the State. The grievance was against the directions and the direction part cannot be considered as inter-locutory, as if that is permitted to stand considering it as inter-locutory, it would assume the shape of finality as the party would be bound to act upon it and at the final hearing there would be no scope for the party affected to challenge the same. In this regard, decision in the case of Parmeshwari Devi (supra) can be considered. The apex Court observed that if an order is directed against a person who is not a party to the enquiry or trial, and he will have no opportunity to challenge it after a final order is made affecting the parties concerned, then for such a person the order could not be said to be inter-locutory. The apex Court further observed that an order may be conclusive with reference to the stage at which it is made and it may also be conclusive as to a person who is not a party to the enquiry or trial against whom it is directed. Here the order by the learned Metropolitan Magistrate is passed in absence of the officer concerned, namely PI or Police Commissioner on whom the direction is given and if that was not interfered, with, it would not be possible to challenge the same at the final disposal as by then the order would be implemented and therefore qua those officers the order can be said to be final and therefore would not be

governed by Section 397(2) of Cr.P.C. Therefore, there is no substance in the contention that the order is inter-locutory. Reliance was placed on the decision of this Court in case of Chandrakant Keshavlal (supra), wherein an observation is made as under:-

> "Any order passed under Sections 200, 202 or 156(3) of the Code is nothing but interlocutory order. No revision against an interlocutory order could be entertained and decided by the Sessions Judge."

9.6 It appears from the judgement that the decision of the apex Court in case of Parmeshwari Devi (supra) was not considered while deciding that case. This Court is bound by the decision of the apex Court and the said decision therefore, cannot help the revisioner.

9.7 As regards the prayer for entrusting the investigation to CBI or CID, it may be noted that this Court is called upon to exercise revisional jurisdiction. The scope of revision as it stands, is limited to considering legality, propriety and correctness of the order impugned herein and to consider the question whether any miscarriage of justice is caused thereby or not. The order impugned herein is of the City Sessions Court in Revision Application, wherein the order of the learned Metropolitan Magistrate directing investigation by Police under Section 156(3) of Cr.P.C came to be confirmed and other directions monitoring or guiding the method of investigation came to be removed. The question of entrustment of investigation to CBI or CID is not the point in issue. In this regard it would be appropriate to refer to the decision of the apex Court in the case of CBI Vs. State of Rajasthan (supra), wherein the apex Court observed " A Magistrate cannot direct CBI to conduct investigation in exercise of powers under Section 156(3) of the Cr.P.C.

What is envisaged in Sections 5 and 6 of the Delhi Act is not one of conferring power on a Magistrate to order CBI to conduct investigation in exercise of Section 156(3) of the Code. Therefore, there is no substance in the contention that when the State Government gives consent for CBI to investigate any offence within the area of the State, it would be permissible for the Magistrate to direct the officer of CBI to conduct such investigation.

However, powers of the High Court under Article 226 of the Constitution and the Supreme Court under

Article 32 or Article 142(1) of the Constitution can be invoked, though sparingly, for giving such direction to CBI to investigate in certain cases."

9.8 It is thus clear that under Section 156(3) of Cr.P.C, a Magistrate cannot direct CBI to conduct an enquiry. A Court while exercising revisional powers put itself into the position of the Court passing the impugned order and then examines the question and revises the order if need be. Therefore while exercising revisional powers this Court would not be competent to order an investigation through CBI or CID, as is prayed for by the revisioner.

10. The foregoing discussion would indicate that no error is committed by the City Sessions Court in exercising its revisional jurisdiction. The Additional City Sessions Court rightly interfered with the order giving directions on the manner in which the investigation is to be carried out by the officer, while passing order under Section 156(3), which could not have been done as per the law settled by the apex Court. No miscarriage of justice is also indicated. This Revision therefore cannot be entertained and it must fail.

11. Before parting, the contention raised by the party-in-person regarding exploring the past of the complainant - revisioner and his habit of lodging false and frivolous complaints, what can be said is that this too is beyond the scope of the revision and therefore that prayer cannot be accepted.

The revision application therefore stands dismissed. Rule discharged.

(A.L.Dave, J.)

*/Mohandas